

Applicant would like to make a request to Examiner Steelman, SPE Wei Zhen and to the other SPE involved in the pre-trial conference that they will not reopen prosecution again, but instead, file an Examiner's Answer so as to reduce the delay and expense in prosecution of this case.

Furthermore, the Examiner is only to reopen prosecution rather than apply a new ground of rejection in an Examiner's Answer when a new argument or new evidence cannot be addressed by the Examiner based on the information then of record. See discussion of 37 C.F.R. §41.39(a)(2). That is not the case here. The Examiner is relying upon the same prior art reference as Applicant addressed in Applicant's Appeal Brief. The Examiner is now rejecting claims 1-47 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,405,364 (Bowman-Amuah) (hereinafter "Bowman"). Previously, the Examiner rejected claims 1-47 under 35 U.S.C. §103(a) as being unpatentable over Ream et al. (U.S. Publication No. 20020112232) in view of Bowman. The Examiner is not reopening prosecution because new arguments or new evidence cannot be addressed based on the information then of record but rather because those on the pre-trial appeal conference do not believe that the Examiner will be successful in the Appeal and hence have given the Examiner another opportunity to strengthen the Examiner's case. This is improper and unfair. How many bites at the apple does an Examiner get? All that results is increasing the pendency of the case and further delay.

Respectfully submitted,

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